

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ECKERT OVERSEAS AGENCY, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 901

RULING ON MOTION

This is a Motion by respondent to Dismiss this appeal for failure by the appellant to commence its action within the time allowed by WAC 371-08-080. This Rule of Procedure promulgated by the Pollution Control Hearings Board states, in relevant part:

"The Notice of Appeal shall be filed within thirty days from the date the copy of the order . . . of the . . . pollution control board (or authority) was communicated to the appealing party"

Appellant, Island Navigation Company, was represented by its agent, Mr. H. M. Leggett, General Manager, Pacific Northwest, of Eckert

1 Overseas Agency, Inc. Respondent appeared by and through its attorney,
2 Keith D. McGoffin. Witnesses were sworn and testified. From testimony
3 and argument heard, the Pollution Control Hearings Board makes this

4 RULING

5 I.

6 Eckert Overseas Agency, Inc., was the duly empowered agent for
7 service of process when on July 7, 1975, it received Puget Sound Air
8 Pollution Control Agency's (PSAPCA) Notice of Civil Penalty No. 2202.
9 Such receipt constituted the communication stated in WAC 371-08-080 and
10 began the thirty-day period for commencing an appeal. That period
11 ended August 6, 1975.

12 II.

13 With the Notice of Civil Penalty, Eckert Overseas Agency also
14 received an excerpt of WAC 371-08-075 and -080 which described the
15 manner and time for commencing an appeal before the Pollution Control
16 Hearings Board. Despite this information, Eckert attempted to commence
17 an appeal by communications directed to PSAPCA, once by letter dated
18 July 15, 1975, and again by letter dated July 21, 1975. The Puget Sound
19 Air Pollution Control Agency by letter dated August 5, 1975, reformed
20 Eckert that its appeal must be filed before the Pollution Control
21 Hearings Board and that there still remained time to do so. No
22 communication from appellant was filed before the Pollution Control
23 Hearings Board prior to August 14, 1975, which was beyond the time
24 allowed by WAC 371-08-080 for commencing an appeal in this matter.

25 III.

26 Respondent has shown by a preponderance of the evidence that the

27 RULING ON MOTION

1 appellant has failed to commence its appeal within the limits prescribed
2 by WAC 371-08-080, and this appeal is therefore dismissed.

3 DONE at Lacey, Washington this 22d day of October, 1975.

4 William A. Harrison
5 WILLIAM A. HARRISON, Hearing Examiner

6 APPROVED:

7 POLLUTION CONTROL HEARINGS BOARD

8 Chris Smith
9 CHRIS SMITH, Member

10 Walt Woodward
11 WALT WOODWARD, Member

12 W. A. Gissberg
13 W. A. GISSBERG, Member

14

15

16

17

18

19

20

21

22

23

24

25

26

27 RULING ON MOTION

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27

I, Dolores Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 22nd day of October, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. H. M. Leggett, General Manager
Pacific Northwest
Eckert Overseas Agency, Inc.
1218 - 3rd Avenue
Seattle Tower
Seattle, Washington 98101

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405

Puget Sound Air Pollution
Control Agency
410 West Harrison Street
Seattle, Washington 98119

Dolores G Osland
DOLORIES OSLAND, Clerk of the
POLLUTION CONTROL HEARINGS BOARD